

SENATE BILL No. 221

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-18-10; IC 36-8-12; IC 36-8-12.2-5.

Synopsis: Confined animal feeding. Defines "applicant" and "responsible party" for purposes of confined feeding control statutes. Specifies that those statutes apply to both confined feeding operations (CFOs) and concentrated animal feeding operations (CAFOs). Makes the confined feeding control statute part of the defined term "environmental management laws". Establishes good character disclosure requirements for CFOs and CAFOs. Allows the department of environmental management to review and act on disclosed good character information. Applies certain provisions of the act to pending confined feeding projects.

Effective: Upon passage; July 1, 2009.

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January 7, 2009, read first time and referred to Committee on Energy and Environmental Affairs.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

SENATE BILL No. 221

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 13-11-2-8, AS AMENDED BY P.L.154-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 8. (a) **"Applicant", for purposes of IC 13-18-10,**
4 **refers to a person (as defined in section 158(b) of this chapter) that**
5 **submits an application to the department under IC 13-18-10-2.**

6 ~~(a)~~ (b) "Applicant", for purposes of IC 13-19-4, means an
7 individual, a corporation, a limited liability company, a partnership, or
8 a business association that:

9 (1) receives, for commercial purposes, solid or hazardous waste
10 generated offsite for storage, treatment, processing, or disposal;
11 and

12 (2) applies for the issuance, transfer, or major modification of a
13 permit described in IC 13-15-1-3 other than a postclosure permit
14 or an emergency permit.

15 For purposes of this subsection, an application for the issuance of a
16 permit does not include an application for renewal of a permit.

17 ~~(b)~~ (c) "Applicant", for purposes of IC 13-20-2, means an



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individual, a corporation, a limited liability company, a partnership, or a business association that applies for an original permit for the construction or operation of a landfill.

~~(c)~~ **(d)** For purposes of subsection ~~(a)~~, **(b)**, "applicant" does not include an individual, a corporation, a limited liability company, a partnership, or a business association that:

- (1) generates solid or hazardous waste; and
- (2) stores, treats, processes, or disposes of the solid or hazardous waste at a site that is:
 - (A) owned by the individual, corporation, partnership, or business association; and
 - (B) limited to the storage, treatment, processing, or disposal of solid or hazardous waste generated by that individual, corporation, limited liability company, partnership, or business association.

SECTION 2. IC 13-11-2-71, AS AMENDED BY P.L.137-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 71. "Environmental management laws" refers to the following:

- (1) IC 13-12-2 and IC 13-12-3.
- (2) IC 13-13.
- (3) IC 13-14.
- (4) IC 13-15.
- (5) IC 13-16.
- (6) IC 13-17-3-15, IC 13-17-8-10, IC 13-17-10, and IC 13-17-11.
- (7) **IC 13-18-10**, IC 13-18-12, IC 13-18-13-31, and IC 13-18-15 through IC 13-18-20.
- (8) IC 13-19-1, IC 13-19-4, and IC 13-19-5-17.
- (9) IC 13-20-1, IC 13-20-2, IC 13-20-4 through IC 13-20-15, IC 13-20-17.7, IC 13-20-19 through IC 13-20-21, and IC 13-20-22-21.
- (10) IC 13-22.
- (11) IC 13-23.
- (12) IC 13-24.
- (13) IC 13-25-1 through IC 13-25-5.
- (14) IC 13-27-8.
- (15) IC 13-30, except IC 13-30-1.

SECTION 3. IC 13-11-2-191 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 191. **(a) "Responsible party", for purposes of IC 13-18-10, means the individual responsible for implementation and oversight of procedures meant to ensure environmental compliance at a confined feeding**

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operation or CAFO.

~~(a)~~ **(b)** "Responsible party", for purposes of IC 13-19-4, means:

- (1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an applicant; or
- (2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the applicant.

~~(b)~~ **(c)** "Responsible party", for purposes of IC 13-20-6, means:

- (1) an officer, a corporation director, or a senior management official of a corporation, partnership, limited liability company, or business association that is an operator; or
- (2) an individual, a corporation, a limited liability company, a partnership, or a business association that owns, directly or indirectly, at least a twenty percent (20%) interest in the operator.

~~(c)~~ **(d)** "Responsible party", for purposes of IC 13-24-2, has the meaning set forth in Section 1001 of the federal Oil Pollution Act of 1990 (33 U.S.C. 2701).

~~(d)~~ **(e)** "Responsible party", for purposes of IC 13-25-6, means a person:

- (1) who:
 - (A) owns hazardous material that is involved in a hazardous materials emergency; or
 - (B) owns a container or owns or operates a vehicle that contains hazardous material that is involved in a hazardous materials emergency; and
- (2) who:
 - (A) causes; or
 - (B) substantially contributes to the cause of;
 the hazardous materials emergency.

SECTION 4. IC 13-18-10-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. (a) **Except as provided in subsection (b),** a person may not start construction of a ~~confined feeding operation~~ **either of the following** without obtaining the prior approval of the department:

(1) A confined feeding operation.

(2) A CAFO.

(b) **Subject to section 1.5 of this chapter,** obtaining an NPDES permit for a CAFO meets the requirements of subsection ~~(a)~~ **(a)(2)** and 327 IAC 16 to obtain an approval.

SECTION 5. IC 13-18-10-1.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS
 [EFFECTIVE JULY 1, 2009]: **Sec. 1.5. (a) An applicant must include in the application under section 2 of this chapter the disclosure statement referred to in subsection (d) if either or both of the following apply:**

(1) The applicant has never filed an application under section 2 of this chapter.

(2) The responsible party for the applicant has served as a responsible party for a confined feeding operation or a CAFO that state, federal, or foreign officials at any time alleged to have committed acts or omissions that:

(A) constituted a material violation of state, federal, or foreign environmental law; and

(B) presented a substantial endangerment to human health or the environment.

(b) A person who is not required to file an application for a CAFO as provided in section 1(b) of this chapter must comply with subsection (c) if any or a combination of the following applies:

(1) The person has never filed an application for an individual NPDES permit for a CAFO under 327 IAC 5.

(2) The person has never filed a notice of intent under 327 IAC 15 for general NPDES permit coverage for a CAFO.

(3) The responsible party for the person has served as a responsible party for a CAFO that state, federal, or foreign officials at any time alleged to have committed acts or omissions that:

(A) constituted a material violation of state, federal, or foreign environmental law; and

(B) presented a substantial endangerment to human health or the environment.

(c) A person to whom subsection (b)(1), (b)(2), or (b)(3), or a combination of subsection (b)(1) through (b)(3) applies must include the disclosure statement referred to in subsection (d) in:

(1) an application for an individual NPDES permit for a CAFO under 327 IAC 5; or

(2) a notice of intent filed under 327 IAC 15 for general NPDES permit coverage for a CAFO.

(d) An applicant referred to in subsection (a) or a person referred to in subsection (c) must submit to the department a disclosure statement that includes the following:

(1) The name and business address of the responsible party.

(2) A description of the responsible party's experience in

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managing the environmental aspects of the type of facility that will be managed under the permit or notice of intent.

(3) A description of all pending administrative, civil, or criminal enforcement actions filed in the United States or any other country against the applicant, the responsible party, or both alleging any acts or omissions that:

(A) constitute a material violation of state, federal, or foreign environmental law; and

(B) present a substantial endangerment to human health or the environment.

(4) A description of all finally adjudicated or settled administrative, civil, or criminal enforcement actions in the United States or any other country resolved against the applicant, the responsible party, or both within the five (5) years that immediately precede the date of the application or of the notice of intent involving acts or omissions that:

(A) constitute a material violation of federal, state, or foreign environmental law; and

(B) present a substantial endangerment to human health or the environment.

(5) Identification of all state, federal, or foreign environmental permits:

(A) applied for by the applicant that were denied; or

(B) previously held by the applicant that were revoked.

(e) A disclosure statement submitted under subsection (d):

(1) must be executed under oath or affirmation; and

(2) is subject to the penalty for perjury under IC 35-44-2-1.

(f) The department may investigate and verify the information set forth in a disclosure statement submitted under this section.

SECTION 6. IC 13-18-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) Application for approval of the construction of a confined feeding operation **or a CAFO** must be made on a form provided by the department. An applicant must submit the completed application form to the department together with the following:

(1) Plans and specifications for the design and operation of manure treatment and control facilities.

(2) A manure management plan that outlines procedures for the following:

(A) Soil testing.

(B) Manure testing.

(3) Maps of manure application areas.

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(4) Supplemental information that the department requires, including the following:

(A) General features of topography.

(B) Soil types.

(C) Drainage course.

(D) Identification of nearest streams, ditches, and lakes.

(E) Location of field tiles.

(F) Location of land application areas.

(G) Location of manure treatment facilities.

(H) Farmstead plan, including the location of water wells on the site.

(5) A fee of one hundred dollars (\$100). The department shall refund the fee if the department does not make a determination in accordance with the time period established under section 2.1 of this chapter.

(6) The disclosure statement required under section 1.5 of this chapter.

(b) An applicant who applies for approval to construct a confined feeding operation **or a CAFO** on land that is undeveloped or for which a valid existing approval has not been issued shall make a reasonable effort to provide notice:

(1) to:

(A) each person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located; or

(B) if a person who owns land that adjoins the land on which the confined feeding operation **or the CAFO** is to be located does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the confined feeding operation **or the CAFO** is to be located;

not more than ten (10) working days after submitting an application. The notice must be sent by mail, be in writing, include the date on which the application was submitted to the department, and include a brief description of the subject of the application. The applicant shall pay the cost of complying with this subsection. The applicant shall submit an affidavit to the department that certifies that the applicant has complied with this subsection.

(c) A person must comply with subsection (d) if:

(1) the person is not required to file an application as provided in section 1(b) of this chapter for construction of a CAFO:

(A) on land that is undeveloped; or

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(B) for which:

- (i) a valid existing approval has not been issued; or
- (ii) an NPDES permit has not been obtained; and

(2) the person files:

- (A) an application under 327 IAC 5 for an individual NPDES permit for the construction of a CAFO; or
- (B) a notice of intent under 327 IAC 15 for general NPDES permit coverage for construction of a CAFO.

(d) A person referred to in subsection (c) shall make a reasonable effort to provide notice:

(1) to:

- (A) each person who owns land that adjoins the land on which the CAFO is to be located; or
- (B) if a person who owns land that adjoins the land on which the CAFO is to be located does not occupy the land, all occupants of the land; and

(2) to the county executive of the county in which the CAFO is to be located;

not more than ten (10) working days after submitting an application or filing a notice of intent. The notice must be sent by mail, be in writing, include the date on which the application or notice of intent was submitted to or filed with the department, and include a brief description of the subject of the application or notice of intent. The person shall pay the cost of complying with this subsection. The person shall submit an affidavit to the department that certifies that the person has complied with this subsection.

~~(c)~~ (e) Plans and specifications for manure treatment or control facilities for a confined feeding operation **or a CAFO** must secure the approval of the department. The department shall approve the construction and operation of the manure management system of the confined feeding operation **or the CAFO** if the commissioner determines that the applicant meets the requirements of:

- (1) this chapter;
- (2) rules adopted under this chapter;
- (3) the water pollution control laws;
- (4) rules adopted under the water pollution control laws; and
- (5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations **or CAFOs**.

SECTION 7. IC 13-18-10-2.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.1. (a) The department:

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(1) shall make a determination on an application not later than ninety (90) days after the date the department receives the completed application, including all required supplemental information, unless the department and the applicant agree to a longer time; and

(2) may conduct any inquiry or investigation, consistent with the department's duties under this chapter, the department considers necessary before making a determination.

(b) If the department fails to make a determination on an application not later than ninety (90) days after the date the department receives the completed application, the applicant may request and receive a refund of an approval application fee paid by the applicant, and the commissioner shall:

(1) continue to review the application;

(2) approve or deny the application as soon as practicable; and

(3) refund the applicant's application fee not later than twenty-five (25) working days after the receipt of the applicant's request.

(c) The commissioner may suspend the processing of an application and the ninety (90) day period described under this section if the department determines within thirty (30) days after the department receives the application that the application is incomplete and has mailed a notice of deficiency to the applicant that specifies the parts of the application that:

(1) do not contain adequate information for the department to process the application; or

(2) are not consistent with applicable law.

(d) The department may establish requirements in an approval regarding that part of the confined feeding operation **or the CAFO** that concerns manure handling and application to assure compliance with:

(1) this chapter;

(2) rules adopted under this chapter;

(3) the water pollution control laws;

(4) rules adopted under the water pollution control laws; and

(5) policies and statements adopted under IC 13-14-1-11.5 relative to confined feeding operations **or CAFOs**.

(e) Subject to subsection (f), the commissioner may deny an application upon making either or both of the following findings:

(1) An applicant or a responsible party intentionally misrepresented or concealed any material fact in:

(A) a disclosure statement; or

(B) other information;

required by section 1.5 of this chapter.

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(2) An enforcement action was resolved against a responsible party as described in section 1.5(d)(4) of this chapter.

(f) Before making a determination to approve or deny an application, the commissioner must consider the following factors:

(1) The nature and details of the acts attributed to the applicant or responsible party.

(2) The degree of culpability of the applicant or responsible party.

(3) The applicant's or responsible party's cooperation with the state, federal, or foreign agencies involved in the investigation of the activities involved in actions referred to in section 1.5(d)(4) of this chapter.

(4) The applicant's or responsible party's dissociation from any other persons or entities convicted in a criminal enforcement action referred to in section 1.5(d)(4) of this chapter.

(5) Prior or subsequent self-policing or internal education programs established by the applicant or responsible party to prevent acts, omissions, or violations referred to in section 1.5(d)(4) of this chapter.

(6) Whether the best interests of the public will be served by denial of the permit.

(g) Except as provided in subsection (h), in taking action under subsection (e), the commissioner must make separately stated findings of fact to support the action taken. The findings of fact must:

(1) include a statement of ultimate fact; and

(2) be accompanied by a concise statement of the underlying basic facts of record to support the findings.

(h) If the commissioner denies an application under subsection (e), the commissioner is not required to explain the extent to which any of the factors set forth in subsection (f) influenced the denial.

(i) The commissioner may disapprove the construction of a CAFO for which a person is not required to file an application as provided in section 1(b) of this chapter upon making either or both of the findings listed in subsection (e). Subsections (f), (g), and (h) apply to a disapproval under this subsection.

~~(e)~~ (j) The department may amend an approval of an application or revoke an approval of an application:

(1) for failure to comply with:

(A) this chapter;

(B) rules adopted under this chapter;

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- (C) the water pollution control laws; or
- (D) rules adopted under the water pollution control laws; and
- (2) as needed to prevent discharges of manure into the environment that pollute or threaten to pollute the waters of the state.

SECTION 8. IC 13-18-10-2.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.2. (a) If an applicant receives an approval under this chapter and completes construction, not more than thirty (30) days after the date the applicant completes the construction the applicant shall execute and send to the department an affidavit that affirms under penalties of perjury that the confined feeding operation **or CAFO**:

- (1) was constructed; and
- (2) will be operated;

in accordance with the requirements of the department's approval.

(b) Construction of an approved confined feeding operation **or CAFO** must:

- (1) begin not later than two (2) years; and
- (2) be completed not later than four (4) years;

after the date the department approves the construction of the confined feeding operation **or CAFO** or the date all appeals brought under IC 4-21.5 concerning the construction of the confined feeding operation **or CAFO** have been completed, whichever is later.

SECTION 9. IC 13-18-10-2.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.6. The department shall establish a compliance and technical assistance program for owners and operators of confined feeding operations **and CAFOs** that may be administered by:

- (1) the department;
- (2) a state college or university; or
- (3) a contractor.

SECTION 10. IC 13-18-10-4, AS AMENDED BY P.L.2-2007, SECTION 167, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. (a) The board may adopt rules under IC 4-22-2 and IC 13-14-9 and the department may adopt policies or statements under IC 13-14-1-11.5 that are necessary for the proper administration of this chapter. The rules, policies, or statements may concern construction and operation of confined feeding operations **and CAFOs** and may include uniform standards for:

- (1) construction and manure containment that are appropriate for a specific site; and
- (2) manure application and handling that are consistent with best

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management practices:

(A) designed to reduce the potential for manure to be conveyed off a site by runoff or soil erosion; and

(B) that are appropriate for a specific site.

(b) Standards adopted in a rule, policy, or statement under subsection (a) must:

(1) consider confined feeding standards that are consistent with standards found in publications from:

(A) the United States Department of Agriculture;

(B) the Natural Resources Conservation Service of the United States Department of Agriculture;

(C) the Midwest Plan Service; and

(D) postsecondary educational institution extension bulletins; and

(2) be developed through technical review by the department, postsecondary educational institution specialists, and other animal industry specialists.

SECTION 11. IC 36-8-12-2, AS AMENDED BY P.L.43-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. As used in this chapter:

"Employee" means a person in the service of another person under a written or implied contract of hire or apprenticeship.

"Employer" means:

(1) a political subdivision;

(2) an individual or the legal representative of a deceased individual;

(3) a firm;

(4) an association;

(5) a limited liability company;

(6) an employer that provides on-the-job training under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in IC 22-3-2-2.5(a); or

(7) a corporation or its receiver or trustee;

that uses the services of another person for pay.

"Essential employee" means an employee:

(1) who the employer has determined to be essential to the operation of the employer's daily enterprise; and

(2) without whom the employer is likely to suffer economic injury as a result of the absence of the essential employee.

"Nominal compensation" means annual compensation of not more than twenty thousand dollars (\$20,000).

"Public servant" has the meaning set forth in IC 35-41-1-24.

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1 "Responsible party" has the meaning set forth in ~~IC 13-11-2-191(d)~~.
 2 **IC 13-11-2-191(e).**

3 "Volunteer fire department" means a department or association
 4 organized for the purpose of answering fire alarms, extinguishing fires,
 5 and providing other emergency services, the majority of members of
 6 which receive no compensation or nominal compensation for their
 7 services.

8 "Volunteer firefighter" means a firefighter:

9 (1) who, as a result of a written application, has been elected or
 10 appointed to membership in a volunteer fire department;

11 (2) who has executed a pledge to faithfully perform, with or
 12 without nominal compensation, the work related duties assigned
 13 and orders given to the firefighter by the chief of the volunteer
 14 fire department or an officer of the volunteer fire department,
 15 including orders or duties involving education and training as
 16 prescribed by the volunteer fire department or the state; and

17 (3) whose name has been entered on a roster of volunteer
 18 firefighters that is kept by the volunteer fire department and that
 19 has been approved by the proper officers of the unit.

20 "Volunteer member" means a member of a volunteer emergency
 21 medical services association connected with a unit as set forth in
 22 IC 16-31-5-1(6).

23 SECTION 12. IC 36-8-12-13, AS AMENDED BY P.L.107-2007,
 24 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2009]: Sec. 13. (a) A volunteer fire department may impose
 26 a charge on the owner of property, the owner of a vehicle, or a
 27 responsible party (as defined in ~~IC 13-11-2-191(d)~~) **IC 13-11-2-191(e)**
 28 that is involved in a hazardous material or fuel spill or chemical or
 29 hazardous material related fire (as defined in IC 13-11-2-96(b)):

30 (1) that is responded to by the volunteer fire department; and

31 (2) that members of that volunteer fire department assisted in
 32 extinguishing, containing, or cleaning up.

33 (b) The volunteer fire department shall bill the owner or responsible
 34 party of the vehicle for the total dollar value of the assistance that was
 35 provided, with that value determined by a method that the state fire
 36 marshal shall establish under IC 36-8-12-16. A copy of the fire incident
 37 report to the state fire marshal must accompany the bill. This billing
 38 must take place within thirty (30) days after the assistance was
 39 provided. The owner or responsible party shall remit payment directly
 40 to the governmental unit providing the service. Any money that is
 41 collected under this section may be:

42 (1) deposited in the township firefighting fund established in

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1 IC 36-8-13-4;

2 (2) used to pay principal and interest on a loan made by the
3 department of homeland security established by IC 10-19-2-1 or
4 a division of the department for the purchase of new or used
5 firefighting and other emergency equipment or apparatus; or
6 (3) used for the purchase of equipment, buildings, and property
7 for firefighting, fire protection, and other emergency services.

8 (c) The volunteer fire department may maintain a civil action to
9 recover an unpaid charge that is imposed under subsection (a).

10 SECTION 13. IC 36-8-12.2-5 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. As used in this
12 chapter, "responsible party" has the meaning set forth in
13 ~~IC 13-11-2-191(d)~~; **IC 13-11-2-191(e)**.

14 SECTION 14. [EFFECTIVE UPON PASSAGE] (a) **This**
15 **SECTION applies notwithstanding the effective date of:**

16 (1) **IC 13-18-10-1.5, as added by this act; and**
17 (2) **the amendments under this act to IC 13-11-2-8,**
18 **IC 13-11-2-191, IC 13-18-10-1, IC 13-18-10-2, IC 13-18-10-2.1,**
19 **and IC 13-18-10-2.2.**

20 (b) **The definitions in IC 13-11-2 apply throughout this**
21 **SECTION.**

22 (c) **Subject to subsection (d), the Indiana Code sections referred**
23 **to in subsection (a), as added or amended by this act, apply to the**
24 **following confined feeding operations and CAFOs in the same**
25 **manner those sections would have applied if those sections had**
26 **been in effect on the date the application for the confined feeding**
27 **operation or CAFO was submitted to the department or the notice**
28 **of intent for general NPDES permit coverage for the CAFO was**
29 **filed with the department:**

30 (1) **A confined feeding operation or CAFO for which a person**
31 **is required to submit an application to the department for**
32 **approval under IC 13-18-10-1(a), as amended by this act.**

33 (2) **A CAFO for which a person is required to submit an**
34 **application to the department for approval of an individual**
35 **NPDES permit for the CAFO under 327 IAC 5.**

36 (3) **A CAFO for which a person is required to file a notice of**
37 **intent under 327 IAC 15 for general NPDES permit coverage**
38 **for the CAFO.**

39 (d) **Subsection (c) applies only if:**

40 (1) **an application referred to in subsection (c) was not**
41 **approved by the department before the effective date of this**
42 **SECTION; or**

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1 **(2) the date of submission of a notice of intent referred to in**
 2 **subsection (c) is on or after the effective date of this**
 3 **SECTION.**
 4 **SECTION 15. An emergency is declared for this act.**

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